

ROBERT L. WILLIAMS

IBLA 76-347

Decided April 20, 1976

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 14961 (Mississippi).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Future and Fractional Interest Leases

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

2. Oil and Gas Leases: Rental

The retention of the proceeds from a check, submitted as advance rental during the adjudication of an oil and gas lease offer, does not constitute the creation of a contract.

APPEARANCES: Robert L. Williams, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Robert L. Williams appeals from a decision of the Eastern States Office, Bureau of Land Management, dated November 20, 1975, rejecting

his offer for noncompetitive acquired lands oil and gas lease ES 14961 (Mississippi). The decision noted that the United States holds only a 50 percent mineral interest in the lands applied for and rejected appellant's offer because it was unaccompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States.

Appellant's offer was drawn first in the January 1975 drawing of simultaneously filed offers. Appellant asserts that he was never notified of the need to file a statement with his offer showing the extent of his interest in the nonfederally owned mineral interest, and he states in his appeal that he has no such interest. He further argues that BLM accepted his rental and a valid contract therefore exists.

[1] The pertinent regulation 43 CFR 3130.4-4 states:

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected. (Emphasis supplied.)

An oil and gas lease may only be issued to the first qualified applicant. 30 U.S.C. § 226(c) (1970); 43 CFR 3112.4-1. An offer unaccompanied by the statement required by the above regulation must be rejected. Appellant's subsequent statement of interest cannot cure the defect where his offer was selected in a drawing from other simultaneously filed offers. Margaret Hughey Hugus, 22 IBLA 146 (1975). The fact that appellant was not made aware of the requirement for a statement provides no basis for granting him an interest not authorized by law in the public or acquired lands of the United States. 43 CFR 1810.3; James H. Scott, 18 IBLA 55, 57 (1974).

[2] Receipt and cashing of appellant's check does not create a contractual relationship since retention of the proceeds therefrom is a sine qua non for further consideration of the case. See Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976); John J. Nordhoff, 24 IBLA 73 (1976). Appellant's funds will be returned now that his appeal has been acted upon.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

